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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1097

LOUIS WOLFISH,

Petitioner,

—v.—

SOLOMON A. KLEIN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION: SECOND DEPARTMENT

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IN THE

Supreme Court of the United States

October Term 1970

No.

Louis Wolfish,

Petitioner,

—v.—

Solomon A. Klein,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION: SECOND DEPARTMENT

Petitioner, Louis Wolfish, a former attorney at law admitted to practice in the State of New York, petitions this Court for a Writ of Certiorari to the Appellate Division in the Second Department, which ordered his disbarment from practice as an attorney at law as of the 25th of November 1969, and denied a motion to reargue and reconsider on March 13, 1970. The New York Court of Appeals denied leave to appeal on the 28th of May 1970. A timely motion for reargument and reconsideration was made and this was denied on the 14th day of September 1970.

Jurisdiction

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1253. The New York Court of Appeals denied a motion for reargument and reconsideration of an application for

leave to appeal from an order of the Supreme Court, Second Department, disbarring the Petitioner from practicing as an attorney at law in New York State. (See Appendix A and B)

Questions Presented

1. Whether Petitioner's rights under the Fourth, Fifth and Sixth Amendments were violated by the surreptitious use of a tape recording against him, apparently sans court authorization, which was instrumental in bringing charges against him?

2. Whether Petitioner was denied his rights under the Fifth and Sixth and Fourteenth Amendments by the failure of the complainant, the Rockland County Bar Association, to grant him a complete adversary hearing before its grievance committee?

3. Whether Petitioner received a fair hearing throughout under due process of law?

4. Whether a disbarment proceeding is sufficiently "criminal" in nature to invoke the usual rules appertaining to criminal trials and proceedings, such as "Miranda" warnings; the right to assistance of counsel at all stages of the proceedings; the right to confront witnesses and to compel attendance of witnesses; and a presumption of innocence?

Constitutional and Statutory Provisions Involved

The Fourth, Fifth, Sixth and Fourteenth Amendments are involved herein as well as Section 90 of the N.Y. Judiciary Law.

Resume of The Facts

The Petitioner, age 39, an attorney at law, that is until his disbarment, was admitted to practice in June 1956 at a term of the Appellate Division, First Department.

[It should be further noted that the Petitioner here is also a Rabbi (see Fanelli report, at p. 44.)]

He was charged in thirteen specifications by the Rockland County Bar Association (Wolfish's office having been in Spring Valley, Rockland County) with various matters allegedly involving professional mis-conduct.

The most serious of these, and the ones specifically called to this Court's attention involve specifications A, B and C which involve alleged offering of a bribe to a police officer to corrupt him in the performance of his duties; the destruction of and then substitution of an official report and the eventual dismissal of a criminal charge; i.e. leaving the scene of an accident; and to help cheat an insurance company in connection with an alleged motor vehicle accident.

The Specifications read as follows:

Specification A

"On or about December 15, 1968 in the County of Rockland, State of New York, the respondent Louis Wolfish corruptly and unlawfully offered a bribe to Patrolman Harold J. Steinacker, a police officer attached to the Police Department of the Village of Spring Valley, State of New York, with intent to corrupt and unlawfully influence said police officer in the performance of his duties in connection with a criminal charge of leaving the scene of an accident that

had been lodged against the respondent's client, James Donald, alias James Robinson."

SPECIFICATION B

"On or about December 15, 1968 in the County of Rockland, State of New York, the respondent LOUIS WOLFSON corruptly and unlawfully counseled, advised and urged the aforesaid police officer (1) to destroy and alter an official police accident report, (2) to fabricate a false report in place thereof, and (3) to withdraw or cause the dismissal of the aforesaid criminal charge of leaving the scene of the accident by making false representation of fact to the Court."

SPECIFICATION C

"On or about December 15, 1968 in the County of Rockland, State of New York the respondent LOUIS WOLFSON counseled, and advised and urged the aforesaid police officer to participate in a corrupt and unlawful scheme to cheat and defraud an insurance company which had insured the respondent's aforesaid client, James Donald, against personal injury and property damage claims.

As part of the respondent's corrupt and unlawful scheme, the respondent offered to represent the said police officer as his attorney to prosecute a claim for personal injuries against the respondent's aforesaid client, James Donald, and counseled, advised and urged the police officer (1) to falsely claim that he was inside the police car which had been struck by the automobile driven by the respondent's client, (2) to falsely claim that as a result thereof he suffers from ringing sounds in his ears, spots in front of his eyes, dizziness, headaches, nausea, pains in neck, back, left elbow, and left, and (3) to falsely claim that a previous injury to his finger was caused by the said accident.

> As a further part of the respondent's corrupt and unlawful scheme, the respondent further advised the said police officer (1) that if the aforesaid criminal charge lodged against his client, James Donald, is withdrawn or dismissed the respondent will obtain James Donald's cooperation and support in effecting the scheme to cheat and defraud the insurance company, (2) that thereby the police officer could get for himself a few thousand dollars, and (3) that ninety percent of the respondent's practice is accident work and that the police officer had nothing to worry about."

While there were other specifications which the Court may peruse in the original records which Respondent has indicated it would send to the Court, the specifications designated A, B, and C apparently promulgated the entire action of the Bar Association and of the Appellate Division and was a *sine qua non* to the actual disbarment. The surreptitious tape recording made at the Spring Valley Police headquarters by police officers Steinacker and Friscino on the night of December 15, 1968 made it virtually impossible to cope with the testimony or charges of the respondent.

The report of the hearing officer designated by the Appellate Division, Justice George M. Fanelli, declared (Report of 7/11/69 to Appellate Division, p. 5):

> "After hearing the tape-recorded conversations had between respondent (Wolfish) and officers Steinacker and Friscino at the Spring Valley Police Headquarters on the night of December 15, 1968, the conclusion is inescapable that respondent had no alternative but to admit the charges and concede the truthfulness of the testimony of the various witnesses produced by Petitioner (Klein) to prove the allegations set forth in these specifications."

It is to be noted that in his report, Justice Fanelli notes that the Petitioner here had interposed an answer by way of an affirmative defense that he had been denied a right to counsel; denied a right to confront witnesses on his behalf; denied a right to cross examine witnesses or to present a defense, at the Grievance Committee hearings of the Rockland County Bar Association.

The Grievance Committee apparently failed to provide the Petitioner herein with an opportunity to present a proper defense since it changed the place of convening without notifying Petitioner's then counsel.

In the answer to the Specifications, Petitioner, in addition to the affirmative defense set forth above, also demanded a trial by jury which was not accorded. A bill of particulars was denied, too.

ARGUMENT ON THE LAW

POINT I

The use of a surreptitious tape recording at headquarters by police officers, sans any court order therefor, violated the Petitioner's Fourth, Fifth and Sixth Amendment rights in that it invaded his privacy; precluded a fair hearing thereafter, and denied him the effective assistance of counsel. The conversations with the police and Wolfish were secretly recorded and were an accusatory effort to obtain incriminatory information without the benefit of "Miranda" warnings.

In the report of the hearing officer, Justice George M. Fanelli, the tape recording by police officers Steinacker and Friscino, made while the Petitioner was in the Spring Valley Police Station headquarters, made the rest of the bar association and Appellate Division inquiries a virtual "inquest" since Wolfish could not get around it—[referring to the tape recording]:

> " . . . the conclusion is inescapable that respondent had no alternative but to admit the charges and concede the truthfulness of the testimony of the various witnesses produced by petitioner to prove the allegations set forth in these specifications."

Since the Petitioner herein was in a police headquarters it may be presumed that this was in essence a type of "custodial" interview *(Miranda* v. *Arizona,* 384 U.S. 436).

Indeed, since the officers apparently pretended some degree of sympathy and friendship for Petitioner, it would appear to be in line with the condemned procedures this Court criticized in *Spano* v. *New York,* 360 U.S. 315 (1959).

At any rate, it appears that the Petitioner was being led down the "garden path" by these officers to entice him into making incriminatory statements and perhaps some psychological pressures were subtly present (*Leyra* v. *Denno*, 347 U.S. 556 (1954)).

In any event, in *United States* v. *White*, 405 F.2d 838 (7 Cir.), Cert. granted, 394 U.S. 957 (1969), it appears that the *ex parte* knowledge about the tape recorder *ipso facto* violated Wolfish's Fourth Amendment rights (*Katz* v. *United States*, 389 U.S. 347 (1947)).

This was a critical stage of the proceedings and the petitioner was much in the same position as a defendant or accused in any criminal case.

There is no reason why a Court order should not have been sought and obtained in connection with this investigation as required by both New York and Federal law.

These officers were not dissimilar to *Massiah* in the infamous case of *Massiah* v. *United States*, 377 U.S. 201 (1964) since they in essence were posing as friends, but in reality were only seeking to get incriminating evidence (cf: *Spano, supra*).

—A—

The Police Officers May Well Have "Entrapped" The Petitioner.

It should also be borne in mind that the officers had the petitioner in their "parlor" ("Come into my parlor said the spider to the fly"—nursery rhyme), and as such were perhaps seeking to *entrap* him. In view of the surreptitious use of electronic surveillance, they apparently succeeded.

Sherman v. *United States*, 356 U.S. 369;
Sorrells v. *United States*, 287 U.S. 435.

It is to be noted that the police had come to Petitioner's office and invited him to the station house where they told him anything he said would be kept confidential.

In *Mesarosh* v. *United States*, 352 U.S. 1, 9, this Court noted:

> "The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts . . . The government of a strong and free nation does not need convictions based upon such testimony."

POINT II

The proceedings to disbar Petitioner were at least quasi-criminal in nature and the evidence as to specifications A, B, and C, allegedly established a crime. Thus it is maintained that the Petitioner should have been accorded all of the safeguards of any person accused of crime, including "Miranda" warnings, trial by jury, and all of the safe-guards of the Fourth, Fifth and Sixth Amendments.

In the case of *In re Ruffalo*, 390 U.S. 544, 551, this Court described disbarment proceedings as *quasi criminal* in nature. The Petitioner therefore should have been accorded all of the safeguards of any other person faced with criminal charges. So far as specifications A, B, and C are concerned, since they alleged an actual violation of law (although no prosecution ever commenced against Wolfish therefor), certainly he should have received "Miranda" warnings before being questioned by the officers and he had a right not to have his privacy invaded by the use of a hidden and surreptitious tape recorder to electronically record his conversations with the police.

That even an attorney has the same rights as others in this Country including the right against self-incrimination, is amply established by *Spevack* v. *Klein*, 385 U.S. 511 (1967). In *Ruffalo*, *supra*, this Court clearly held that disbarment proceedings are quasi-criminal (id. at 550-2).

The Petitioner alleges that he was not furnished with a full bill of particulars by the bar association and was not given a complete opportunity to defend himself and to cross-examine witnesses. As he had been given some right to do this, it may be noted that the right is meaningful only if fully bestowed and not attenuated in any way.

> "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process" *(Ruffalo, supra* at 390 U.S. 352.)

This Court further noted in the *Ruffalo* case which is apt herein:

> "These are adversary proceedings of a quasi-criminal nature. Cf. In re Gault, 387 U.S. 1, 33. . . . The charge must be known before they commence.* They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh." *(Ruffalo, supra,* id at 551.)

While it is true that the federal courts will not ordinarily interfere with state proceedings, there have been striking exceptions noted by this Court.

While the case at bar is not one directly involving freedom of speech, the right to fair procedures is also of constitutional dimension—i.e., cf: the 1st and the 5th Amend-

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* The Petitioner was denied a bill of particulars.

ments, U.S. Const. This Court has recognized certain general rules.*

Nevertheless, the Supreme Court has instructed that where a plaintiff alleges "highly unusual and very limited circumstances," that is:

> "(1) a bad-faith use of the state's legal machinery with the purpose of inhibiting the exercise of the right of free speech (or, alternatively, the existence of a statute unconstitutional on its face affecting free speech) and (2) a probability of irreparable injury, which is established if there is a showing of a significant chilling effect on speech that cannot be avoided by state court adjudication."

Sheridan v. *Garrison*, 415 F.2d 699, 709 (5th Cir. 1969), cert. denied, 396 U.S. 1040, 90 S.Ct. 685, 24 L.Ed.2d 685 (1970) federal injunctive power under 42 U.S.C. § 1983 (1964) may be the appropriate remedy. *Cameron* v. *Johnson*, 390 U.S. 611, 88 S.Ct. 1335, 20 L.Ed.2d 182 (1968); *Zwickler* v. *Koota*, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967); *Dombrowski* v. *Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); *Cox* v. *Louisiana*, 348 F.2d 750 (5th Cir. 1965). It is not necessary that the state statute under which the proceedings were threatened or instituted be unconstitutional on its face. The Supreme Court has recently stated:

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* A general rule, inherent in American Federalism, is that courts of the United States will not interfere with a state's enforcement of its local laws. *Douglas* v. *City of Jeannette*, 319 U.S. 157, 63 S.Ct. 877, 87 L.Ed. 1324 (1943). A *fortiori* should this rule apply where the dispute is of a peculiarly local character, as is this one. It has long been recognized that the states have "autonomous control over the conduct of their officers, among whom * * * lawyers are included," *Theard* v. *United States*, 354 U.S. 278, 281, 77 S.Ct. 1274, 1276, 1 L.Ed.2d 1342 (1957), and that the state supreme courts and bar associations bear the primary and often painful responsibility of policing the profession. *See Selling* v. *Radford*, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585 (1917).

"We have not hesitated on direct review to strike down applications of constitutional statutes which we have found to be unconstitutionally applied to suppress protected freedoms. *See* Cox v. Louisiana, [379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965)]; Wright v. Georgia, 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed.2d 349; Edwards v. South Carolina, [372 U.S. 229, 83 S. Ct. 680, 9 L.Ed.2d 697 (1963)]." *Cameron* v. *Johnson*, *supra*, 390 U.S. at 620, 88 S.Ct. at 1340.

Nor is it technically necessary that the vehicle be a criminal prosecution by the state—disbarment proceedings having been described as "proceedings of a quasi-criminal nature," *In re Ruffalo*, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 177 (1968)—where, under color of state law or court rule, the effect is to chill the exercise of First Amendment freedoms. See *Eisenberg* v. *Boardman*, 302 F.Supp. 1360, 1364 (W.D.Wis. 1969).

See, *Taylor* v. *Kentucky State Bar Assoc.*, 424 F.2d 478 (1970 6th Cir.), where it was noted, as herein, that "ordinarily officials of bar associations, not justices, set grievance proceedings in motion." (*Taylor*, 424 F.2d at 482). The Sixth Circuit, despite reluctance of federal courts to interfere, nevertheless reversed and remanded the matter for full hearings. We ask this Court to do the same.

The issues are not prolix. The Petitioner did not have a fair hearing before the Rockland County Bar Association since he did not get the bill of particulars he requested, and was deprived in part of his right to cross-examine witnesses and have the assistance of counsel since the hearing was adjourned and then reconvened without notice as to the place being sent to Petitioner's counsel.

Additionally, the use of illegally obtained electronic eavesdropping further prejudiced his rights to a fair hearing.

We add that the right to trial by jury should also have been considered since if this is quasi-criminal, then the Petitioner should be given the right to such trial. (*Baldwin* v. *New York*, 90 S.Ct. 1886, 398 U.S. 281 (1970); *Duncan* v. *Louisiana*, 391 U.S. 145 (1968)).

CONCLUSION

The Petition should be granted.

The order and judgment of the Appellate Division, Second Department should be vacated and the matter remanded for a hearing de novo upon constitutionally proper procedures and evidence.

Respectfully submitted,

Irving Anolik
Attorney for Petitioner

December 7, 1970

APPENDIX A

Order Denying Leave to Appeal

STATE OF NEW YORK,
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-eighth day of May A. D. 1970.

Present,

HON. STANLEY H. FULD,
Chief Judge, presiding.

2 Mo. No. 423

In the Matter of
LOUIS WOLFISH, an Attorney.

SOLOMON A. KLEIN,
Respondent,

LOUIS WOLFISH,
Appellant.

A motion for leave to appeal to the Court of Appeals and for a stay in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

GERSON KIMBALL.

[SEAL]

APPENDIX B

Denial of Reargument and Reconsideration

MTR OF WOLFISH V

MOTION FOR REARGUMENT OF MOTION FOR LEAVE TO APPEAL & C. DENIED

RAOYMOND J CANNON CLERK COURT OF APPEALS ALBANY NY.

SEPTEMBER 24, 1970

APPENDIX C

Order of Disbarment

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on November 25, 1969

HON. GEORGE J. BELDOCK,
Presiding Justice
" MARCUS G. CHRIST
" ARTHUR D. BRENNAN
" SAMUEL RABIN
" JAMES D. HOPKINS
Associate Justices

In the Matter of

LOUIS WOLFISH, an attorney.

SOLOMON A. KLEIN,
Petitioner,

LOUIS WOLFISH,
Respondent.

A disciplinary proceeding having been instituted in this court upon the petition of Solomon A. Klein in respect to respondent Louis Wolfish, an attorney and counselor at law who was admitted to practice by the Appellate Division of the Supreme Court, First Judicial Department, on June 27, 1966; the petition praying that the respondent Louis Wolfish be disciplined for professional misconduct upon the charges therein set forth; the said proceeding having come on to be heard by an order to show cause, dated

January 24, 1969; the said respondent having filed an answer; this court by an order dated February 24, 1969 having thereafter referred the issues raised by the pleadings to the Honorable George M. Fanelli, Justice of the Supreme Court, for hearing and for a report setting forth his findings upon the issues; the said Justice having held hearings and having filed his report dated July 11, 1969, together with a transcript of the stenographic minutes of the hearings and the exhibits; and petitioner having moved by order to show cause, dated July 15, 1969, to confirm the report;

Now, upon the petition verified January 24, 1969; the answer verified February 6, 1969; the report, testimony, exhibits; the said order to show cause; the affidavit of Solomon A. Klein in support of the motion to confirm the report and respondent's memorandum in opposition to the motion; and upon all the papers filed herein; and Solomon A. Klein, Esq., petitioner appearing pro se, and H. Elliot Wales, Esq., having appeared of counsel for respondent; and due deliberation having been had thereon, and upon the per curiam opinion of this court, dated November 25, 1969, heretofore filed and made a part hereof, it is unanimously:

ORDERED that the petitioner's motion to confirm the report of Mr. Justice Fanelli dated July 11, 1969 is hereby granted; the report and the findings of fact therein made by the Justice are hereby confirmed; and the charges set forth in the petition are hereby sustained to the extent set forth in this court's per curiam opinion; and it is further

Appendix C—Order of Disbarment

ORDERED that effective November 25, 1969 the respondent LOUIS WOLFISH be and he hereby is disbarred from the practice of the law and his name is hereby directed to be struck from the roll of attorneys and counselors at law; and it is further

ORDERED, pursuant to statute (Judiciary Law, §90), that effective November 25, 1969, the said respondent LOUIS WOLFISH be and he hereby is commanded to desist and refrain: (1) from practicing law in any form, either as principal or as agent, clerk or employee of another; (2) from appearing as attorney or counselor at law before any court, judge, justice, board, commission or other public authority; (3) from giving to another an opinion as to the law or its application, or any advice in relation thereto; and (4) from holding himself out in any way as an attorney and counselor at law; and it is further

ORDERED AND DIRECTED that the respondent LOUIS WOLFISH shall comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys—a copy of such rules being annexed hereto and made a part hereof.

Enter:

HERMAN M. POGUL
Clerk of the Appellate Division

APPENDIX D

Denial of Reargument in Appellate Division

Nos. 92, 93, 94, 95.

In the Matter of Louis Wolfish.

Solomon A. Klein, *petitioner;*

Louis Wolfish, *respondent.*

Four motions by respondent, each (1) to reconsider and reargue petitioner's motion to confirm a report, which motion resulted in an order of this court disbarring respondent, entered November 25, 1969, (2) or for leave to appeal to the Court of Appeals from said order, and (3) to stay the operation of said order.

Motions denied in all respects.

Beldock, *P.J.*, Christ, Rabin, Hopkins and Munder, *JJ.*, concur.

March 13, 1970 Nos. 92, 93, 94, 95

In Re Louis Wolfish

APPENDIX E

Opinion of Appellate Division

November 25, 1969

SUPREME COURT

APPELLATE DIVISION—SECOND JUDICIAL DEPARTMENT

BELDOCK, *P.J.*, CHRIST, BRENNAN, RABIN and HOPKINS, *JJ.*

In the Matter of

LOUIS WOLFISH, an Attorney.

SOLOMON A. KLEIN,

Petitioner,

LOUIS WOLFISH,

Respondent.

Disciplinary proceeding instituted by Solomon A. Klein. The respondent was admitted to the Bar on June 27, 1956 at a term of the Appellate Division of the Supreme Court in the First Judicial Department. By order entered February 24, 1969 the issues were referred to Mr. Justice George M. Fanelli to hear and report.

Solomon A. Klein (Joseph W. Ryan, Jr., of counsel) for petitioner *pro se.*

H. Elliot Wales for respondent.

Per Curiam: The Justice of the Supreme Court to whom the issues herein were referred having submitted his report to this Court wherein he found the charges as alleged, with certain exceptions as hereinafter indicated, to have

been duly sustained by the evidence, the petitioner now moves to confirm the report.

This disciplinary proceeding was instituted against the respondent after hearings had been held by the Grievance Committee of the Rockland County Bar Association and a subsequent preliminary investigation into charges of professional misconduct had been conducted by the petitioner pursuant to a direction by this Court. Extensive hearings were thereafter held before Mr. Justice George M. Fanelli on April 22, 23, 24, 28, 29, 30, May 1 and 5, 1969 and resulted in a typewritten transcript of 1,431 pages and the submission by Justice Fanelli of a most thorough 45-page report.

The charges against the respondent are set forth in 13 separate specifications of the petition. Briefly stated, the Justice found the respondent guilty of professional misconduct prejudicial to the administration of justice in that he had (1) attempted to unlawfully influence a police officer in connection with the performance of his duties, (2) willfully deceived a Justice of the Supreme Court in order to induce approval of proposed compromises of infants' personal injury claims and, in connection therewith, altered affidavits, (3) solicited negligence cases, (4) maliciously instituted malpractice actions against two separate physicians, and (5) wrongfully attempted to obtain a legal fee in excess of that awarded to him by the Workmen's Compensation Board.

The first three specifications (A, B and C) charge that the respondent unlawfully offered a bribe to a police officer with intent to influence him in the performance of his duties in connection with a criminal charge of leaving the scene of an accident that had been lodged against the respondent's

client; that the respondent "counseled, advised and urged" the officer (1) to destroy and alter an official police accident report, (2) to fabricate a false report in place thereof, and (3) to withdraw or cause the dismissal of the criminal charge by making false representation of fact to the court; that he "advised and urged" the officer to participate in an unlawful scheme to defraud an insurance company which had insured the respondent's client against personal injury and property damage claims, whereby the officer was to falsely claim that he had been inside the unoccupied police car which had been struck by the automobile driven by the respondent's client and to falsely claim that as a result thereof he had sustained serious personal injury; and that in connection with said scheme the respondent offered to represent the police officer as his attorney to prosecute the claim for personal injuries and advised that if the criminal charge lodged against his client were withdrawn or dismissed the respondent would obtain his client's cooperation in defrauding the insurance company.

The evidence offered in support of these three specifications, which were all found to be overwhelmingly sustained, consisted of the t estimony of several police officers and a tape-recorded conversation had between the respondent and two police officers. In the said conversation, the respondent advised the officers referred to in these three specifications to go immediately to the Emergency Room at Ramapo General Hospital. When the officer stated there was nothing wrong with him and indicated that this would pose some difficulty in a physical examination, the respondent stated: "I'll tell you what is wrong with you. * * * I would complain as follows: ringing sounds in your ears, spots in front of your

eyes, dizzy, headaches—you banged your head on the wheel or the window—you don't remember, you're nauseous, you got pains in your neck, pains in your back, pains in your left elbow and your left knee. That's enough." The respondent then gave the officer the name and address of a local doctor whom he was to see the morning following his appearance at the hospital, stating: "Just tell him that I told you to see him. And if you feel like spending some time in a hospital, he'll put you in." The respondent added: "I'd go sick right now and shoot up to the Ramapo General Hospital emergency room. Give him all your symptoms, even though they don't buy that, as long as they make a record of all your symptoms." When the respondent ascertained from the officer that the officer had struck his finger with a hammer about three weeks prior to the conversation, the respondent stated: "You show him that and you tell him that it's from this accident. You banged your finger on you don't know what—on the wheel. You were pushed against the wheel." Moreover, in informing the officer as to the potential monetary recovery, the respondent stated, "The maximum you can get here is ten grand," and that it "depends on how long you want to stay in the hospital."

In fact, the respondent conceded the accuracy of the tape recording and the transcript thereof and, after being confronted therewith, admitted these three specifications, which he had previously denied in his answer to the petition. As stated in the report of Justice Fanelli, "Respondent has offered no mitigating factors to excuse his corrupt and nefarious scheme, which was not only reprehensible but which also showed a complete disrespect for the standards of professional ethics and his obligations as an attorney."

Three additional specifications (D, E and F) charge that, in connection with the approval of infants' compromise settlements, the respondent (1) "knowingly deceived and induced" a Justice of the Supreme Court to approve the settlement of infants' personal injury claims by preparing, causing to be executed, and submitting false affidavits which misrepresented or suppressed the terms of the offers of settlement, the names of the treating physicians, and the medical expenses incurred; and (2) altered affidavits that had been filed in the office of the Clerk of the Supreme Court, County of Rockland, after an order based on said affidavits had been signed by a Justice of the Supreme Court.

Insofar as specifications D and E are concerned, the proof discloses that, with respect to the approval of the settlement of three infants' claims, the respondent failed to disclose the entire medical expenses incurred in the treatment of the infants and the names of all the treating physicians, and had also failed to disclose the true amounts of the offers of settlement. It appears from the record that the respondent's purpose in failing to disclose the full amounts of the offers of settlement was to obtain for himself larger legal fees, since the offers also covered claims by the mothers of the infants, as to which the respondent's fees did not require court approval. Justice Fanelli stated in his report with respect to specification D (which dealt with the claim of one of the infants), "By not revealing • • • the true settlement figure of $2,000.00, respondent would have been in a position to have obtained from the infant's mother, without court approval, a legal fee based upon the

receipt of the $1,100.00, plus the $300.00 awarded him • • • on the $900.00 settlement in the first order."

With respect to specification F, charging the alteration of affidavits after they had been filed with the court, Justice Fanelli noted that it is the practice in Rockland County not to immediately file compromise orders and supporting affidavits, but rather to return the papers to the attorneys for filing with the County Clerk. Although the Justice found that the charge of altering affidavits *after* they had been filed with the court was not sustained by the evidence, he further found that the respondent did in fact alter such an affidavit sometime between the signing of the applicable compromise order and the filing of the papers with the County Clerk by the respondent.

Specifications G and H charge the respondent with soliciting and attempting to employ laymen, in one case an insurance agent and in the other a bus driver, to refer negligence cases to him and with offering to pay fees of $35 and $25 to them, respectively, for each referral. Justice Fanelli found that the evidence supported one of these charges (specification G) but that the petitioner had failed to sustain the other (specification H).

In specifications I, J and K the respondent is charged with (I) unlawfully soliciting a woman and her husband, the latter having been severely injured in an accident and physically incapacitated, to retain him to prosecute a negligence claim for the injuries and, upon being informed that they were going to retain another attorney to represent them, offering to give the wife money out of his pocket and stating that he would charge less than any other attorney and could get more money out of it for them; (J) unlaw-

fully soliciting a person who was severely injured in an accident to retain him to prosecute a negligence claim and, in connection therewith, soliciting and attempting to employ two lay persons to assist in obtaining a retainer from the injured party upon a promise to pay to them a share of the proceeds of the recovery, and soliciting the assistance of a police officer to induce the injured party to discharge the attorney then representing him and substitute the respondent in his place; and (K) unlawfully soliciting and procuring a retainer authorizing the respondent to prosecute a negligence claim on behalf of an injured party.

The reporting Justice found that specifications I and J were fully sustained by the evidence, except with respect to one of the charges of specification J relating to the improper solicitation of one of the two lay persons to assist the respondent in obtaining the retainer; and he further found that specification K was not supported by the evidence.

In specification L the respondent is charged with wrongfully and maliciously instituting two separate actions in the Supreme Court, each against a separate physisian, for alleged malpractice and negligence, in an attempt to coerce the physicians to turn over to him certain medical reports relating to the respondent's clients and, in connection therewith, (a) using the names of his clients as parties plaintiff without their knowledge or consent, (b) demanding $200,000 damages from one defendant and $50,000 damages from the other, and (c) discontinuing the actions upon receiving the medical reports.

The evidence adduced at the hearings discloses that one of the physicians had refused to furnish the respondent with

the medical report as to one of his clients because the respondent wanted him (contrary to the true facts) to causally relate the heart condition of one of the clients to the accident which was the subject matter of the case which the respondent was handling; and, as to another client, the same physician testified that he had always intended to give the requested medical report personally to the client rather than to the respondent because he "questioned respondent's character and ethics" and because of a "certain amount of hostility" which existed between the physician and the respondent as a result of prior litigation between them. With respect to the second physician, he had refused to furnish the respondent with a medical report concerning his treatment of the respondent's client until he first received his preparation fee of $15, as to which the respondent had tendered only $10.

Justice Fanelli found that this specification was overwhelmingly sustained by the evidence; that there was "absolutely no justification" for commencing the malpractice actions; and that the respondent had commenced these actions solely for the purpose of coercing the physicians to furnish him with the medical reports.

The final specification (M) charges the respondent with attempting to obtain from his client a fee of $1,000 in addition to his fee of $300 which had been fixed by the New York Workmen's Compensation Board. Justice Fanelli found that this specification was sustained by the evidence.

We are in full accord with the Justice's findings that, except to the extent herein indicated, all of the charges are fully sustained by the proofs. Accordingly, the report should in all respects be confirmed.

The charges as sustained against the respondent constitute most serious professional misconduct. His behavior demonstrates a pattern of consistent misconduct and, in our opinion, he is unfit to be a member of the Bar. He has demonstrated "such a deficiency in character and fitness and such an indifference to the standards required of members of the Bar as to require his disbarment" *(Matter of Markowitz,* 28 A D 2d 262, 263).

The petitioner's motion to confirm the report should be granted. The respondent is adjudged guilty of serious professional misconduct and should be disbarred from the further practice of law, and his name should be removed from the roll of attorneys and counselors-at-law, effective forthwith.

BELDOCK, *P. J.*, CHRIST, BRENNAN, RABIN and HOPKINS, *JJ.*, concur.